

June 29, 2007

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Bernice G. Moore

Date of Filing: June 5, 2007

Case Number: TFA-0209

This Decision concerns an Appeal filed by Bernice G. Moore from determinations issued to her by the Department of Energy's (DOE) Oak Ridge Office (ORO) and the DOE's National Nuclear Security Administration Service Center, Albuquerque (NNSA). In those determinations, ORO and NNSA responded to a request for documents that Ms. Moore submitted under the Privacy Act, 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008. Neither ORO nor NNSA located any documents responsive to Ms. Moore's request. This appeal, if granted, would require ORO and NNSA to perform additional searches and either release any newly discovered responsive documents or issue a new determination justifying the withholding of any portions of those documents.

I. Background

Ms. Moore filed a request under the Privacy Act with ORO for "copies of [her] personnel records, radiation exposure records, payroll records, personnel security file, OPM Background Investigation and employment verification with Basic Construction Concepts, a former contracting company owned by [her late husband] Charles E. Moore." *See* Letter from ORO to Bernice G. Moore (March 19, 2007). In its final response, ORO determined that it could not locate any records responsive to Ms. Moore's request. *Id.* ORO also stated that it forwarded Ms. Moore's Privacy Act request to NNSA because NNSA now has jurisdiction over records located at one of the DOE's facilities at Oak Ridge, the Y-12 site. *Id.* In its response, NNSA stated that it contacted the Y-12 Site Office to request a search for records. *See* Letter from NNSA to Bernice G. Moore (October 13, 2006). NNSA stated that the search yielded no records responsive to Ms. Moore's request. *Id.*

Ms. Moore filed the present appeal challenging the adequacy of the searches performed by ORO and NNSA. Appeal Letter (June 5, 2007); *see also* Memorandum of Telephone Conversation between Bernice G. Moore and Diane DeMoura, OHA (June 6, 2007).

II. Analysis

Under the Privacy Act, each federal agency must permit an individual access to information pertaining to him or her which is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). Unlike the Freedom of Information Act (FOIA), which requires an agency to search all of its records, the Privacy Act requires only that the agency search systems of records. However, we require a search for relevant records under the Privacy Act to be conducted with the same rigor that we require for searches under the FOIA. *See, e.g., Carla Mink*, 28 DOE ¶ 80,251 (November 27, 2002) (Case No. VFA-0763).^{*} Accordingly, in analyzing the adequacy of the searches conducted by ORO and NNSA in this case, we are guided by the principles we have applied in similar cases under the FOIA.

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Doris M. Harthun*, 28 DOE ¶ 80,282 (April 8, 2003) (Case No. TFA-0015).

In reviewing this appeal, we contacted both ORO and NNSA to discuss the searches conducted in response to Ms. Moore’s request.

ORO informed us that in conducting Privacy Act searches, “computer database searches are done by name, social security number, date of birth and badge number.” E-mail from Leah Ann Schmidlin, ORO, to Diane DeMoura, OHA (June 8, 2007). ORO stated,

An action was sent on July 27, 2006, to the East Tennessee Technology Park [(ETTP)] (former K-25 Plant) and the Oak Ridge National Laboratory (ORNL) to request the payroll, personnel and radiation exposure records on Ms. Bernice G. Moore. [ETTP] found no payroll, personnel or radiation exposure records. ORNL found no personnel or radiation exposure records. An action was also sent on July 27, 2006, to our DOE Access Authorization Branch to request the personnel security file on Ms. Moore. No documents were located by her name or social security number.

Id. Additional searches were done both at ETTP and Oak Ridge Associated Universities for a work history report on Ms. Moore and any information available for the company, Basic Construction Concepts. Finally, ORO also “manually looked at [its] index card files on contracts and subcontracts for any information on Basic Construction Concepts under Charles E. Moore Contracts. No information was found on this company.” *Id.* ORO informed us that Basic Construction Concepts “did subcontracting work for the [main contractors at the Oak Ridge site] Rust Engineering Company and Martin Marietta Energy Systems (MMES) at the Oak Ridge

^{*} All OHA decisions issued after November 19, 1996 may be accessed at <http://www.oha.gov/foia1.asp>

Plants in the 1980s.” *Id.* Consequently, it is likely that the records pertaining to the company are located with those contractors.

NNSA informed us that, in responding to Ms. Moore’s request, it searched for records in several databases using Ms. Moore’s name, social security number and date of birth. E-mail from Carolyn Becknell, NNSA, to Diane DeMoura, OHA (June 22, 2007). According to NNSA, the databases searched include Plant Records, Personnel, and Radcon (radiation contamination). No responsive records were located. *Id.* NNSA stated that its Personnel Security Department also performed a search for records pertaining to Ms. Moore, but did not locate any responsive records. According to NNSA, when ORO turned over jurisdiction of its Y-12 records, the NNSA Personnel Security Department “received files related to current [Y-12] employees but ... did not receive files related to employees that are retired or are no longer employed at Oak Ridge.” *Id.*

Based on this information, it is clear that both ORO and NNSA searched the available databases using Ms. Moore’s personal information in an attempt to locate any responsive documents. We find that ORO and NNSA performed extensive searches reasonably calculated to reveal records responsive to Ms. Moore’s request. Therefore, despite yielding no records responsive to Ms. Moore’s request, the searches were adequate. Accordingly, Ms. Moore’s appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on June 5, 2007, by Bernice G. Moore, OHA Case No. TFA-0209, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552a(g)(1). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: June 29, 2007